Con-Way Central Express, a Division of Con-Way Transportation Services, Inc. *and* Teamsters Local Union No. 41, affiliated with International Brotherhood of Teamsters, AFL–CIO. Case 17–CA–18478

April 20, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND WALSH

On November 12, 1998, Administrative Law Judge Steven M. Charno issued the attached decision, appending his bench decision delivered on October 30, 1998. The General Counsel and the Charging Party filed exceptions and supporting briefs. The Respondent filed cross-exceptions, a supporting brief, and reply briefs to the General Counsel and Charging Party's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, except as discussed below, and to adopt the recommended Order as modified and set forth in full below.[2]

The General Counsel has excepted, inter alia, to the judge's finding that the Respondent's general manager, Jeff Vukovich, did not unlawfully interrogate employee Jim Affolter regarding his union activities. We find merit in the exception.

On March 11, 1996, Affolter posted an announcement about a union meeting on a company bulletin board. Vukovich, after being informed of the notice by another employee, removed it from the board. Vukovich then approached Affolter and asked who had posted the notice. When Affolter responded that he had done so, Vukovich stated that the board was only for company notices. Although the Respondent maintained a written rule restricting the use of its bulletin boards to authorized company-originated notices, Vukovich testified that, on at least one other occasion, he had seen a notice concerning the sale of personal items by an employee posted on one of the boards. Vukovich admitted that he should have removed the personal notice because it was posted in violation of the company's restrictions on the use of bulletin boards, but he had not done so. The judge found, and we agree, that the Respondent violated Section 8(a)(1) of the Act by disparately enforcing its policy concerning the use of company bulletin boards.[3] The judge nonetheless dismissed the allegation that Vukovich's questioning of Affolter constituted unlawful interrogation, finding no evidence that the questioning was coercive or that Affolter was intimidated.

Preliminarily, the absence of specific evidence that Affolter was personally intimidated by the questioning does not preclude the finding of a violation. In determining whether such conduct violates Section 8(a)(1) of the Act, the Board does not consider the subjective reaction of the individual involved but rather whether, under all the circumstances, the conduct reasonably tends to restrain, coerce, or interfere with employees' rights guaranteed under the Act. *Sunnyside Home Care Project*, 308 NLRB 346 fn. 1 (1992); *El Rancho Market*, 235 NLRB 468, 471 (1978). Applying this test, we find that Vukovich's questioning of Affolter would tend to have a coercive effect. Unlike the judge, we find the interrogation to be inseparable from Vukovich's unlawful disparate enforcement of the company bulletin board policy. Accordingly, when Vukovich asked Affolter who had posted the union notice, he was asking Affolter to reveal his participation in protected union activity that Vukovich obviously and unlawfully sought to curtail. Moreover, Vukovich did not give any assurances against reprisal. Under these circumstances, we find that Vukovich's questioning of Affolter constituted unlawful interrogation in violation of Section 8(a)(1) of the Act.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Con-Way Central Express, a division of

[1] The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We shall modify the judge's recommended Order in accordance with our decision in *Indian Hills Care Center*, 321 NLRB 144 (1996), as modified in *Excel Container, Inc.*, 325 NLRB 17 (1997).

[3] Contrary to the dissent, we would not reverse the judge's finding in this regard. Although the Respondent has an undisputedly valid written policy restricting use of the bulletin boards to official company notices, there is little evidence concerning the enforcement of this policy. Vukovich only testified specifically about two recent incidents. On one occasion he removed a noncompany union notice, and on another occasion he allowed a noncompany personal notice to remain posted. Vukovich said that he had removed other notices in the past, but he could not recall any more specific examples. Thus, this is not a case where the evidence of disparate treatment is insignificant or anomalous in light of preponderant evident consistent with past practice. Instead, there is an apparent inconsistency in enforcement of the bulletin board policy that would reasonably tend to lead employees to believe that there might be exceptions for nonunion personal notices but there would be exceptions for union notices. Accordingly, the judge correctly found that the Respondent interfered with employees' Sec. 7 rights and thereby violated Sec. 8(a)(1).

Con-Way Transportation Services, Inc., Kansas City, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Disparately applying its policy concerning the use of bulletin boards to prohibit union-related postings while permitting nonunion related postings.

(b) Coercively interrogating employees concerning their union activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Kansas City, Missouri, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 11, 1996.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER HURTGEN, dissenting in part.

I do not agree that the Respondent violated the Act by its removal, from its bulletin board, of a notice of a union meeting. Respondent has a written rule restricting the use of its bulletin board to authorized company-originated notices. There is no allegation that the rule is unlawful. Instead, my colleagues rely solely on allegedly disparate treatment. However, they can point to only one instance where a notice was tolerated in violation of the rule. The notice was an employee notice of a sale of personal items. Respondent's general manager Vukovich, concedes that he should not have permitted that posting.

As indicated, I would not find the violation. Even assuming arguendo that the notice of sale and the notice of a union meeting are comparable, I would not conclude that a single instance of nonenforcement means that Respondent has effectively, and everlastingly, lost control of its own bulletin boards. Thus, I would permit Respondent to continue to enforce its lawful rule.[1]

Further, I do not agree that the interrogation was unlawful. Vukovich approached Affolter (an ardent and open union advocate) and asked him who had posted the notice. My colleagues find the violation because it is "inseparable" from the bulletin board violation that they find. As noted above, I do not agree that there is a bulletin board violation. Thus, I do not agree that there is no interrogation violation.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT disparately apply our policy concerning the use of company bulletin boards to prohibit union-related postings while permitting nonunion related postings.

WE WILL NOT coercively interrogate employees concerning their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

CON-WAY CENTRAL EXPRESS

Richard C. Auslander, *Esq*., for the General Counsel.
Frank B. Shuster and *James F. Smith, Esqs. (Constangy, Brooks & Smith)* of Atlanta, Georgia, for the Respondent.
Dennis Speak and *Vic Terranella*, of Kansas City, Missouri, for the Charging Party.

[1] Contract to the pronouncement of the majority, the Act does not condemn "inconsistency"; it condemns discriminatory treatment along Sec. 7 lines. The issue here is whether the General Counsel has proven such discrimination by pointing to one instance of disparity. I conclude that he has not.

DECISION AND CERTIFICATION

STEVEN M. CHARNO, Administrative Law Judge. This case was tried before me in Overland Park, Kansas, on October 27–30, 1998. After oral argument, I issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations. Appendix A is the portion of the transcript containing my decision, while Appendix B contains corrections to that transcript (omitted from publication). In accordance with Section 102.45 of the Board's Rules and Regulations, I certify the accuracy of the amended transcript containing my decision.

[Recommended Order omitted from publication.]

APPENDIX A

576

JUDGE CHARNO. This is a Bench Decision in the case of Con-Way Express, Case 17–CA–18478.

Except as indicated, the following findings are based upon uncontested evidence.

It is admitted and I find that Con-Way Central Express, a division of Con-Way Transportation Services, Inc., hereinafter Respondent, has at all times material been an employer engaged in commerce within the meaning of the Act.

Teamsters Local Union No. 41, affiliated with the International Brotherhood of Teamsters, AFL–CIO, hereinafter the union, is admitted to be and I find is a labor organization within the meaning of the Act.

Respondent is engaged in surface transportation of freight and has a facility in Kansas City, Missouri. Since Respondent's origin in 1983, it has successfully followed a business plan which requires it to fill a high service, high cost niche in the transportation of less than truckload, hereinafter LTL, shipments of freight.

In order to differentiate itself from other LTL carriers, Respondent has consistently striven to construct and maintain a public image of itself as a reliable distribution system using a modern, well-maintained fleet and facility network which are

577

operated by uniformed, experienced, professional driver/salespersons. This image has been and is central to Respondent's marketing effort and the existence of professional, uniformed drivers is of importance to Respondent's customers.

Reviewing Respondent's sales and training materials, it would not be unreasonable to conclude that Respondent would like to secure a position with respect to LTL traffic comparable to that enjoyed by United Parcel Service with respect to parcel shipments. Indeed, there is some indication that Respondent's business plan is modeled on that of United Parcel Service.

In order to maintain the aspect of its image based on its drivers, Respondent has, since it's inception in 1983, had in effect a "uniforms and appearance" policy which provides that "all employees will present a neat, clean, well-groomed business appearance while on duty."

That policy further requires that, first, all driver/sales representatives, hereinafter DSRs, who have completed their 90 day probationary period must wear a company uniform during working hours. Second, the uniforms are supplied and cleaned by Respondent without cost to the DSRs. And, third, "marks, patches, pins, buttons, logos, advertisements, or other adornments" not issued by Respondent may not be worn on duty.

During a special training course attended by all DSRs,

578

they are immersed in Respondent's marketing philosophy and are repeatedly exposed to the fact that Respondent uses the public image of its uniformed professional drivers as one method of distinguishing its service from that of its competitors.

The requirements of Respondent's uniform and attendance policy are reiterated during that training and the DSRs are given instructions on how to sell Respondent's service while making pick ups or deliveries.

During 1996, Respondent spent approximately $600,000.00 on DSR training courses and approximately 1.5 million dollars on the cost, maintenance, and cleaning of DSR uniforms.

On February 19th, 1996, DSRs Jim Affolter and Howard Ballinger arrived for work wearing non-issue hats and union buttons. The buttons in question were highly conspicuous, flat, two and a quarter inches in diameter, one of four "day-glow" colors, and carried five renditions in black capital letters of the words "Vote Teamsters."

By his own admission, Bob Key, an admitted supervisor, saw Affolter on the dock and asked with reference to the union buttons, "What's this about? The split shift?" Affolter answered in the negative.

It is uncontested that, one, Key was a low level supervisor without the power to discipline; two, Key's job

579

required him to act as a liaison between the DSRs and Respondent's management; and, three, Affolter had complained to Key about two weeks before about February 19th, concerning the former's split shift assignment.

Based on the standard articulated in *Rossmore House*, 269 NLRB 1176 (1984), affirmed sub nom. *Hotel and Restaurant Employees* Local 11 v. NLRB, 760 F.2d 1006 (9th Circuit 1985), I find that Key's question did not constitute an interrogation violative of Section 8(a)(1) of the Act.

Affolter and Ballinger were taken into the office of Respondent's Kansas City regional service center manager, Jeff Vukovich, who asked if the DSRs understood Respondent's uniform and appearance policy, to which they responded in the affirmative. Vukovich then asked them to remove the non-issue paraphernalia and, after they refused, suspended both of them.

During the remainder of the day five additional DSRs, specifically, Gale Sandow, Jim Miller, Al Palmer, Gary Tabb, and Ronald Richardson, arrived for work at the Kansas City regional service center wearing union buttons. They were taken to Vukovich's office where he asked if each understood Respondent's uniform and appearance policy. After each replied that he did, Vukovich asked him to remove the button. When each DSR refused, he was suspended.

580

On February 21, each DSR acknowledged violation of Respondent's uniform and appearance policy and agreed to abide

by that policy in the future. As a result, all seven DSRs were brought back to work on February 22.

Before concluding my findings concerning the events of February 19th, I should resolve the issue raised by Robertson's testimony that, during Richardson's suspension interview, Vukovich stated in the presence of Key that, if Robertson "went up to join those men, he would never fucking work here again."

Vukovich denied the statement, as did Key. The latter's testimony had a spontaneous, unrehearsed flavor and he was not employed by or otherwise related to Respondent at the time of his testimony.

For the foregoing reasons, and, one, based on the inherent improbability of this statement attributed to Vukovich, and, two, based on my observation of the demeanor of the witnesses as they testified, I credit Key over Richardson and find that Vukovich did not make the statement attributed to him.

The amended complaint alleges that Respondent's admitted February 19th, 1996 enforcement of its uniform and appearance policy violated Section 8(a)(1) of the Act while the resulting suspension of seven DSRs violated Section 8(a)(3) of the Act.

581

It is well established that employees have a presumptive right to wear union paraphernalia on the job, unless an employer can show special circumstances which would justify prohibition of such a practice. *Republic Aviation Corp.*, NLRB 324 U. S. 793.

The Board has held that such special circumstances may be present if an employer shows that union insignia "may reasonably interfere with the public image which the employer has established as part of its business plan through appearance rules for its employees." e.g. *United Parcel Service*, 312 NLRB 596, 597 (1993), enforcement denied 41 F.3d, 1608, (6th Cir. 1994).

Based on the facts set out earlier, I find the Respondent has demonstrated the existence of just such a public image. Respondent's policy has been shown to apply only to DSRs who are in contact with Respondent's customers, either potential or present. This finding is based on uncontroverted evidence that, first, Respondent's DSRs are trained to and do combine driving, pick up, and delivery duties with attempts to market Respondent's service to a variety of individuals who have authority to authorize the use of that service, including company presidents, traffic managers, department heads, and shipping and receiving clerks. And, two, actual and potential

582

customers regularly visit all parts of Respondent's Kansas City service center, with the exception of restrooms, in order to tour the facility or to pick up or deliver shipments.

Respondent has for many years consistently and nondiscriminatorily enforced its uniform and appearance policy. There is not a scintilla of credible evidence in the record that Respondent ever allowed any DSR to wear any non-issue "mark, patch, pin, button, logo, advertisement, or other adornment" on his or her uniform.

The uncontroverted testimony of Respondent's vice president of operations established that Respondent has rejected requests that DSRs be allowed to wear MIA/POW buttons, American flag patches, and safe driving awards on their uniforms.

Finally, the supervisors and some of the employees at the Kansas City regional service center testified credibly that the uniform and appearance policy was consistently enforced.

The foregoing findings are based on several credibility resolutions. The first involves mechanic Jerry Krogman's wearing of a Green Bay Packer hat. Richardson testified that Krogman wore such a hat, but conceded whether he was unsure whether Krogman was on the clock while wearing the hat. Affolter testified to seeing Krogman wear the hat while Krogman denied ever having worn the hat while on duty. The testimony

583

given by Richardson and Krogman is not necessarily inconsistent, while the testimony given by Affolter and Krogman may be argued to be in conflict. To the extent it is, I find Krogman to be a straightforward witness whose account on cross and direct examination was plausible and consistent. I found Affolter to be repeatedly disingenuous; he volunteered information adverse to Respondent's interests and he gave testimony in conflict with the admissions of a fellow DSR who testified for General Counsel.

For the foregoing reasons and based on my observation of the two witnesses while on the stand, I find Affolter's testimony to be generally unreliable and credit Krogman's account.

The second situation involves Affolter's testimony that he once saw DSR Jim Hunt wear a Kansas City Chiefs sweatshirt. Assuming, arguendo, that Affolter may be believed on this point, there is no evidence that's Hunt's dress was observed by Respondent's management and, therefore, no basis to make a finding concerning disparate enforcement of the policy exists in the record.

The third situation involves Affolter's testimony that Vukovich wore a Green Bay Packers cap during the winter of 1995, an allegation convincingly and cogently denied by Vukovich, who

584

gave a believable account of the manner in which he acquired his only Green Bay Packer hat some months after the time Affolter claimed to have seen it being worn.

For the reasons given previously and based on their respective demeanors, I credit Vukovich over Affolter.

The only probative evidence of anyone wearing a non-issue insignia involved a supervisor who is not required by Respondent's policy to wear a company uniform. Supervisor Joe Miller candidly admitted that he had worn a Kansas City Chiefs sweatshirt to a football luncheon celebration at Respondent's facility, which celebration was approved and sanctioned by Respondent's higher management. Apparently at the celebration, he was given the gift of a Chiefs cap as part of a company-authorized office gift exchange and he, thereafter, wore the cap for several hours.

To the extent that Richardson's testimony is deemed to be inconsistent with that of Miller, I do not credit Richardson for the reasons I gave earlier.

I do not regard Respondent's failure to correct Miller's behavior under these circumstances as constituting discriminatory enforcement of its uniform and appearance policy.

General Counsel also appears to contend that the evidence of record to the effect that DSRs upon occasion wore non-issue

585

shirts without insignia, non-issue shorts, blue jeans, overalls, and a silk jacket establishes a discriminatory failure by Respondent to enforce its uniform policy.

None of these instances involved the display of any logo or insignia, other than Respondent's, and all were shown to be a reasonable interpretation of Respondent's policy. Thus, DSRs were allowed to wear non-issue shorts, clean shirts, and jeans until they had been issued a properly fitting uniform. Parenthetically, I do not credit Affolter to the extent that he testified that the foregoing garments were worn after properly fitting uniforms had been issued. Second, DSRs were allowed to wear insulating garments while working outdoors on the dock in inclement weather. And, third, they were allowed to wear non-issue embroidered jackets bearing an authentic Respondent's logo and a picture of Respondent's equipment until Respondent had arranged to issue such a jacket.

I do not regard any of the foregoing as indicative of a disparate, let alone discriminatory, enforcement of Respondent's uniform and appearance policy.

The final evidence purportedly establishing discriminatory enforcement of the uniform and appearance policy involves a non-issue felt hat worn by DSR Johnny Banks. Affolter, Richardson, and Banks testified that Banks wore this hat, both in the

586

terminal and while functioning as an over-the-road driver during the winter of 1995/1996. Banks further testified that he had never been told to remove the hat by management. Both Vukovich and Key testified that they had asked Banks to remove the hat and had not seen him wear it thereafter.

Banks was an argumentative witness, possessed of selective memory, who had been discharged by Respondent after failing an alcohol test.

For these reasons, as well as those given previously, and based on my observation of the demeanor of the witnesses, I credit Vukovich and Key over Banks on the question of whether he had been instructed to remove non-issue apparel.

For the foregoing reasons, I conclude that Respondent has established the specific circumstances justifying its prohibition of the wearing of union insignia by uniformed DSRs.

See *United Parcel Service*, 195 NLRB 441 (1972); *Evergreen Nursing Home*, 198 NLRB 775 (1972).

The cases advanced by General Counsel appear to be factually inapposite to the situation before me. Thus, *Davison-Paxon Co*., 191 NLRB 58 (1971) did not involve uniformed employees and dealt with a "vague and uncertain prohibition" and a button which was "not conspicuous." *Howard Johnson Motor Lodge*, 26 NLRB 866 (1982) did not involve either a formal policy

587

or the continued application of a long-standing, rigorously enforced rule. In *Mead Corporation*, 314 NLRB 732 (1994), the employer operated a paper mill and its employees had no contact with the general public and little contact with its customers and the employer's public image was of no relevance. *Meijer, Inc.*, 318 NLRB 50 (1995) did not involve "consistent and nondiscriminatory" enforcement of a button prohibition. Finally, *Meyer Waste Systems*, 322 NLRB 244 (1996) involved discriminatory enforcement and a "small, inconspicuous" pin.

For the foregoing reasons, I conclude that Respondent's enforcement of its uniform and appearance policy on February 19, 1996 did not violate Section 8(a)(1) of the Act and the resulting suspension of seven DSRs did not violate Section 8(a)(3) of the Act.

The foregoing conclusions would appear to moot two issues. First, the question of whether the content of the message on the union's button created such a probability of customer alienation or internal labor unrest as to constitute separate and distinct bases for a finding of special circumstances; and, second, the issue preserved for appeal of whether post-violation evidence is of relevance in establishing special circumstances which were in

588

existence at the time of an alleged violation.

On March 4, Vukovich admittedly authored and posted on the company bulletin board a memo to employees which contained the following language: "[. . . an NLRB charge is a serious matter. It doesn't cost the union a dime to file a charge and have the National Labor Relations Board do its work. There are investigations and even court-type proceedings that can follow, and the cost to the company affect to (sic) the bottom line."

General Counsel contends that the quoted language is a threat of unspecified reprisals for filing charges, while Respondent argues that it is an exercise of free speech under Section 8(c) of the Act.

None of the authorities cited by either side is directly on point. Upon consideration, I do not believe that stating the fact that defending a ULP charge has an impact upon an employer's net constitutes a threat of economic reprisals nor is such a statement inherently coercive in nature.

Accordingly, I conclude that the language does not violate Section 8(a)(1).

Respondent has a written policy concerning the use of bulletin boards which, as relevant, provides: "Boards are maintained for the proper posting of official company matters, for information required by federal and state law, for company

589

materials relating to employee programs and services, and for certain items of business interest to employees.

Only pre-approved company-originated notices and legally-required information may be posted on company bulletin boards. Any unauthorized material posted on company bulletin boards will be removed and destroyed."

The policy goes on to charge the regional service center manager with policing the bulletin boards and removing unauthorized materials. Obviously, in this case, that's Mr. Vukovich.

On March 11, 1996, Affolter posted an announcement of an upcoming union meeting on Respondent's principal bulletin board. Vukovich, upon being informed of the notice by another DSR, removed it from the board. Vukovich then entered the dispatch room and asked Affolter who had posted the announcement. When Affolter replied that he had done so, Vukovich stated that the board was only for company notices.

To the extent that Affolter's account of this interchange differs from Vukovich, I have credited the latter for the reasons given earlier and because Affolter testified that Vukovich misquoted the posting policy, a circumstance which I believe to be unlikely, given my observation of Mr. Vukovich.

It is worthy of note, however, that Affolter's account of

590

the interchange showed him to be utterly unintimidated by the question directed at him by Vukovich.

General Counsel argues that one improper posting, together with the fact that private solicitations were displayed on tables near the bulletin board, demonstrates a discriminatory enforcement of Respondent's bulletin board policy and that Vukovich's question to Affolter was an unlawful interrogation. Respondent demurs as to both arguments.

Materials on the table, rather than on the bulletin board, of the drivers room are not covered by Respondent's policy on bulletin board use. Parenthetically, those materials are subject to Respondent's distribution policy, which policy would have permitted Affolter to leave the announcement on one of the tables.

I, therefore, conclude that things left on the table are immaterial to the question of whether anyone could post or remove non-company originated materials on the company's bulletin boards.

Affolter and Vukovich testified to having previously seen a notice concerning a private sale of hogs on one of the company bulletin boards. Vukovich admitted that he should have removed this non-company originated notice, but that he had not done so. Affolter testified that he had seen two other non-company

591

originated notices on the bulletin boards, but Vukovich denied having seen them.

Again, I credit the latter. Vukovich also credibly testified that he had removed non-company originated materials from the bulletin boards on, at least, one occasion.

Absent the citation of any authority to the contrary, I find that Vukovich's admittedly selective enforcement of Respondent's bulletin board policy was discriminatory and violative of Section 8(a)(1) of the Act. Vukovich's question to Affolter was designed to determine who was not in conformity with company policy in order to explain that policy. There is no indication that the explanation was threatening or coercive. Accordingly, I conclude that Vukovich's question did not violate Section 8(a)(1).

I will issue an appropriate Order upon receipt of the transcript.

Are there any other matters to take up before I close the record?

(No response)

JUDGE CHARNO: Hearing none, let me thank you for your cooperation this week, and I appreciate your patience today.

(Whereupon, at 10:00 A. M., the hearing in the above-entitled matter was closed.)